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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PARNELL COLVIN,
Plaintiff,

vs.

M.J. DEAN CONSTRUCTION, INC.,
Defendant.

Case No. 2:20-cv-01765-APG-EJY

**DEFENDANT’S REPLY TO
PLAINTIFF’S OPPOSITION TO
DEFENDANT’S MOTION DISMISS
PLAINTIFF’S FIRST AMENDED
COMPLAINT**

(Oral argument requested)

Action filed on September 22, 2020

**A. WITH RESPECT TO PLAINTIFF’S CAUSE OF ACTION FOR NEGLIGENT
HIRING, TRAINING AND SUPERVISION, PLAINTIFF’S OPPOSITION
MERELY REITERATES THE SAME CONCLUSORY ALLEGATIONS AND
FAILS TO PROVIDE ANY SUPPORTING AUTHORITY; THEREFORE, THE
COURT SHOULD GRANT DEFENDANT’S MOTION AND PLAINTIFF’S
CLAIM SHOULD BE DISMISSED WITH PREJUDICE**

In order to succeed on a claim for negligent hiring, retention and supervision, a plaintiff must establish that: (1) defendant owed a duty of care to the plaintiff; (2) defendant breached that duty by hiring, retaining, and/or supervising an employee even though defendant knew, or should have known, of the employee’s dangerous propensities; (3) the breach was the cause of plaintiff’s injuries; and (4) damages. *Peterson v. Miranda*, 991 F. Supp. 2d 1109 (D. Nev. 2014).

Plaintiff’s Opposition simply consists of Plaintiff copying and pasting all of the allegations contained in his First Amended Complaint (“FAC”) and making the same conclusory assertions. For example, “...M.J. Dean failed to properly train its employees and had therefore, known or

1 should have known, that Mr. Gutierrez and others as alleged, were not properly trained as M.J.
 2 Dean's employees." And "Unmistakably, M.J. Dean knew about Mr. Gutierrez' dangerous
 3 propensities..." (Opposition at pp. 7:21-23 and 8:8.) However, these statements are simply
 4 conclusory allegations, which are insufficient to maintain a cause of action for negligent hiring,
 5 training and supervision.

6 Plaintiff's Opposition also fails to even address Defendant's argument in its Motion to
 7 Dismiss that the FAC contains only the following three new paragraphs in support of the claim,
 8 and that they consist entirely of conclusory allegations:

9 75. In addition, M.J. Dean had a duty not to hire
 10 individuals with a propensity towards committing
 11 unlawful acts against Plaintiff including those of
 discrimination, harassment and retaliation.

12 76. In violations of that duty, M.J. Dean injured Plaintiff
 13 by failing to supervise, train, and hire appropriate
 14 personnel which resulted in damages including,
 15 among others, loss of Plaintiff's job and severe
 16 emotional distress including but not limited to, great
 17 mental and emotional harm, anguish, insecurity,
 damage to self-esteem and self-worth, shame and
 humiliation, lack of appetite, loss of sleep,
 depression, and/or anxiety.

18 77. Specifically, upon information and belief, M.J. Dean
 19 failed to adequately train, hire and/or supervise its
 20 employees and/or agents, including but not limited to
 21 Mr. Gutierrez, regarding laws proscribing
 discrimination, harassment and retaliating in a
 workplace.

22 (ECF No. 21, ¶¶ 75 – 77.)

23 As can be seen above, paragraph 75 amounts to legal conclusion. Indeed, the FAC does
 24 not contain a single fact regarding how M.J. Dean should have known that Gutierrez had a
 25 propensity to allegedly discriminate, harass or retaliate against others before it hired him.
 26 Similarly, paragraphs 76 and 77 are also nothing more than further conclusory allegations,
 27 because they do not contain any facts indicating how M.J. Dean failed to adequately hire, train
 28 and/or supervise its employees.

Moreover, Plaintiff's FAC fails to discuss or even reference M.J. Dean's hiring process, its employee training programs and/or how it supervises its employees. Accordingly, Plaintiff's cause of action for negligent hiring, training and supervision continues to simply consist of threadbare, conclusory allegations, which are insufficient to support this claim under Rule 8, Fed. R. Civ. P. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

B. CONCLUSION

Plaintiff's allegations in the FAC do not constitute *facts*; they are merely the boilerplate legal elements relating to a cause of action for negligent hiring, training and supervision. Therefore, Plaintiff's cause of action for negligent hiring, training and supervision should be dismissed with prejudice.

Dated: June 11, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed and served upon the following parties on June 11, 2021 through the Court's ECF system.

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